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Signature

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Case 8762

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Application of :  
Peter W. Hamilton, et al. : Confirmation No. 7654  
Serial No: 10/003,900 : Group Art Unit 1772  
Filed: October 25, 2001 : Examiner C. A. Simone  
For: STORAGE WRAP MATERIAL

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

### APPELLANTS' BRIEF

Dear Sir:

This is Appellants' Brief in triplicate relating to an appeal from the January 30, 2004, Final Rejection in the above-identified Application. The Notice of Appeal was deposited with a Certificate of Mailing and addressed to Commissioner for Patents, Alexandria, VA 22313-1450 on June 1, 2004, and was noted as received in the U.S. PTO on June 3, 2004.

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#### I. REAL PARTY IN INTEREST

The real party in interest for the present Application S.N. 10/003,900 is The Procter & Gamble Company of Cincinnati, OH by virtue of the Assignment recorded on August 6, 2002, at Reel No. 013168, Frame 0234.

#### II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences known to Appellants' undersigned legal representative, which will directly affect, or be directly affected by, or have a bearing on, the Board's decision in the present appeal.

### III. STATUS OF CLAIMS

In the Notice of Appeal, Appellants appealed the final rejection of all pending Claims 1-20. The complete copy of the appealed Claims is set forth in the Appendix.

Claims 1-20 stand finally rejected under 35 U.S.C. §103(a) over McGuire, et al., U.S. Patent No. 5,965,235.

### IV. STATUS OF THE AMENDMENTS

There has been no amendment to the claims filed after the final action dated January 30, 2004, in this case.

### V. SUMMARY OF THE INVENTION

The invention on appeal relates to sheet materials suitable for use in the containment and protection of various items, as well as the preservation of perishable materials such as food items. (p. 1, ll. 8-9) Additionally, the present invention further relates to such materials that are suitable for direct contact with such items as a unitary package, as well as for use in forming a closure for a semi-enclosed container. (p. 1, ll. 10-11) Users of materials encounter difficulty locating isolating the current end portion of the rolled material in order to start a dispensing operation. (p. 2, ll. 3-6) Additionally, available materials encounter difficulty due to the failure of the material to adhere to itself and/or the desired target surface sufficiently to form an airtight seal, either from the outside or after a period of handling the container or wrapped item. (p. 2, ll. 18-20) Further, previous materials tended to "cling" to themselves and other surfaces; i.e., exhibit an attraction or affinity for the material rather than an adhesive bond. Such an affinity for a complementary surface is highly dependent upon the material characteristics, such as chemical composition, electrical conductivity, surface energy, and surface finish. (p. 3, ll. 3-6) Additionally, materials comprising thin, conformable webs of various compositions available in sheet or rolled form (i.e., aluminum foil and/or coated paper) exhibit no adhesive or cling characteristics. (p. 3, ll. 11-13) These materials are known to rely upon dead-fold characteristics of the materials so that they may be folded or wrapped around an item and retain their folded or wrapped shape. (p. 3, ll. 13-16) It is known that these materials fail to remain sufficiently folded and engaged with itself and/or a semi-enclosed container to adequately enclose and preserve the item. (p. 3, l. 23 – p. 4, l. 2) If such materials cannot form a seal with barrier properties at least as great as those of the material itself, the full potential of such materials in use as a storage wrap cannot be realized as the seal becomes the weakest link in terms of containerization. (p. 4, ll. 7-11) This can require a user to employ additional

securement features such as rubber bands, tapes, and the like in order to provide a film material with sufficient seal barrier properties. (p. 4, ll. 11-12) Such materials, due to their lack of any adhesive properties, are also difficult to effectively employ in the preservation of perishable items in combination with a semi-enclosed container where the container provides no physical or mechanical engagement features (such as a conventional bowl) around which to fold the material to effect a mechanical labyrinth-type seal between the material and the container. (p. 4, l. 25 – p. 5, l. 3)

According to independent claim 1, the storage wrap comprises a sheet material having a thickness ranging from about 0.0001 inches to 0.001 inches. (p. 18, ll. 2-6) Further, the sheet material has a first active side and a second side. (p. 9, ll. 3-5) The first active side comprises a plurality of three-dimensional, non-adherent protrusions extending outwardly from surrounding depressions. (p. 13, ll. 18-25) The sheet material has an adhesive composition coating on at least a portion of the depressions wherein the adhesive composition coating has a thickness less than the height of the non-adherent protrusions and from about 0.00001 to about 0.0002 inches in thickness. (p. 17, ll. 5-8)

Claim 2 requires the adhesive composition coating to have a thickness of from about 0.00003 to about 0.00015 inches. (p. 17, ll. 7-8)

Claim 3 requires the adhesive composition coating to have a weight per unit area of about 0.1 g/m<sup>2</sup> to about 2 g/m<sup>2</sup>. (p. 17, ll. 8-10)

Claim 4 requires the adhesive composition coating to have a weight per unit area of about 0.3 g/m<sup>2</sup> to about 1.5 g/m<sup>2</sup>. (p. 17, ll. 10-11)

Claim 5 requires the adhesive composition coating to cover less than 75% of the first active side of the sheet material. (p. 17, ll. 12-14)

Claim 6 requires the adhesive composition coating to cover less than 55% of the first active side of the sheet material. (p. 17, ll. 12-14)

Claim 7 requires the first active side to be activatable by an externally applied force exerted upon the sheet material. (p. 10, l. 17)

Claim 8 requires the first active side to be activatable by an externally applied compressive force exerted in a direction substantially normal to the sheet material. (p. 10, ll. 16-17)

Claim 9 requires the active side to be activatable by an externally applied tensile force exerted in a direction substantially parallel to the sheet material. (p. 27, ll. 21-25)

Claim 10 requires the first active side to be adapted to be selectively activated in discrete regions by a user. (p. 9, ll. 6-13)

Claim 11 requires the first active side to comprise an adhesion peel force after activation by a user which is greater than an adhesion peel force exhibited prior to activation by a user and which is sufficient to adhere to and form a barrier seal against the target surface, the seal exhibiting barrier properties at least as great as those of the storage wrap material and the target surface. (p. 10, ll. 6-11)

Claim 12 requires the second side to comprise an active side. (p. 15, l. 19 – p. 16, l. 4)

Claim 13 requires the first active side to be adapted to form a permanent bond with a target surface when activated. (p. 12, ll. 4-7)

Claim 14 requires the first active to be adapted to form a releasable bond with a target surface when activated. (p. 12, ll. 11-13)

Claim 15 requires the sheet material to comprise a polymeric film material. (p. 10, ll. 14-16)

According to independent Claim 16, a storage wrap material is produced by a process comprising providing a first embossing roll having a first embossing pattern disposed thereon wherein the first embossing roll is engaged with a second embossing roll, the second embossing roll having a second embossing pattern disposed thereon, the first embossing pattern and the second embossing pattern being complementary. (p. 23, ll. 1-4) The adhesive composition is then applied to the first embossing roll. (p. 23, ll. 5-6) The sheet material having a thickness ranging from about 0.0001 inches to 0.001 inches is then contacted with the first embossing roll so that the adhesive composition forms an adhesive composition coating on the sheet material in register with the first embossing pattern of the first embossing roll. (p. 23, ll. 4-8) The sheet material is then passed between the first embossing roll and the second embossing roll wherein the first embossing roll and the second embossing roll emboss the sheet material with the complementary embossing pattern. (p. 23, ll. 6-8) The adhesive composition coating has a thickness of from about 0.00001 to about 0.0002 inches in thickness. (p. 17, ll. 6-7)

Claim 17 requires the process to further comprise applying the adhesive composition to a first adhesive application metering roll at an initial tangential speed prior to applying the adhesive composition to the first embossing roll. (p. 22, ll. 14-18) The adhesive composition is then accelerated through a series of metering gaps between a plurality of adjacent adhesive rolls. (p. 22, ll. 18-20) The adhesive composition is then applied to an adhesive application roll rotating at a tangential line speed which is higher than the initial tangential speed. (p. 22, ll. 18-20) The adhesive composition is then transferred from the adhesive application roll to the first embossing roll. (p. 22, ll. 20-22)

Claim 18 requires the process to further comprise removing the sheet material from the first embossing roll. (p. 23, ll. 9-11)

Claim 19 requires the first embossing roll when the sheet material is removed therefrom to have a temperature which is lower than a temperature of the first embossing roll when the adhesive composition is applied thereto. (p. 24, ll. 1-7)

Independent Claim 20 claims a storage wrap material produced by a process comprising providing a first embossing roll with a first embossing pattern having lands and recesses disposed thereon when the first embossing is engaged with a second embossing roll, the second embossing roll having a second embossing pattern disposed thereon, the first embossing pattern and second embossing pattern being complementary. (p. 22, ll. 8-13) The sheet material having a thickness ranging from about 0.0001 inches to 0.001 inches is then passed between the engagement of the first embossing and the second embossing roll wherein the first embossing roll and second embossing roll emboss the sheet material with a complementary embossing pattern. (p. 22, ll. 8-10) An adhesive composition is then applied to the sheet material. (p. 22, ll. 20-21) The adhesive composition is present on the sheet material at a level from about 0.00001 to about 0.0002 inches in thickness. (p. 17, ll. 6-7)

#### VI. ISSUE

Are Claims 1-20 obvious under 35 U.S.C. §103(a) over McGuire, et al., U.S. Patent No. 5,965,235?

Appellants respectfully assert that Claims 1-20 are unobvious over the *McGuire* reference.

#### VII. GROUPING OF CLAIMS

The claims do not stand or fall together. Claims 3-6 stand or fall separately from Claims 1-2 and 7-20, because Claims 3-6 have material limitations not found in the other claims.

#### VIII. ARGUMENT

As set forth below, the invention defined in the appealed claims is unobvious over the cited references under 35 U.S.C. §103(a), whereby the rejection under 35 U.S.C. §103(a) should be reversed.

##### A. Claims 1-20 Are Unobvious Over the McGuire, et al. Reference.

Claims 1-20 are finally rejected under 35 U.S.C. §103(a) over McGuire, et al., U.S. Patent No. 5,965,235 (the '235 reference). The '235 reference teaches three-dimensional sheet materials which resist nesting of superimposed layers onto one another. More particularly, the '235 reference relates to three-dimensional sheet materials having a plurality of three-dimensional protrusions extending outwardly from at least one side of the material which form an amorphous pattern. (1:8-13) As

disclosed in the '235 reference, the materials described exhibit a three-dimensional structure comprising a plurality of individual three-dimensional, hollow protrusions extending upward from a contiguous base structure. (4:46-50) A substance is then provided and held in open valleys and/or depressions of the three-dimensional structure. (16:40-42) The sheet material is provided with a layer of substance, preferably a latex pressure-sensitive adhesive, about 0.001 inch thick. (17:39-42) Preferably, the layer of substance may be about 0.0005 inch thick layer to about 0.002 inch thick layer of hot melt adhesive. (17:42-45)

In sum, the '235 patent discloses a sheet material having a plurality of protrusions and a 0.0005 inch to about 0.002 inch thick layer of substance disposed thereon.

The Examiner states, "McGuire et al. fails to teach the specific ranges for the thickness of the adhesive coating composition as recited in claims 1 and 2 of the present invention."<sup>1</sup> Appellants agree. Further, the Examiner states, "The thickness of the adhesive coating composition would be readily determined through routine experimentation by one having ordinary skill in the art depending on the desired end results."<sup>2</sup> Appellants disagree. The Examiner attempts to support this position by stating, "There is no indication in McGuire et al. that the thickness of the adhesive coating composition **cannot be** in the range from about 0.00001 inches (0.00025 mm) to about 0.0002 inches (0.0051 mm)."<sup>3</sup> (Emphasis added) The Examiner concludes, "Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have the adhesive coating composition with a thickness from about 0.00001 inches (0.00025 mm) to about 0.0002 inches (0.0051 mm) since it has been held that where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation."<sup>4</sup>

What is clear is that the prior art does not teach, disclose, or even remotely suggest the claim limitation as presented in Appellants' claim. Appellants' claimed adhesive coating thickness ranges from about 0.00001 inch to about 0.0002 inches.<sup>5</sup> The '235 reference teaches an adhesive thickness ranging from about 0.0005 inch to about 0.002 inch.<sup>6</sup> The lowest value disclosed in the '235 reference is 2-1/2 times greater than the upper value of Appellants' claimed range. The midpoint of the range disclosed in the '235 reference is approximately twenty times the value of the midpoint of Appellants' claimed range. Thus, it is hard to understand how Appellants' claim range can even be considered a "discovery [of] the optimum or workable ranges."<sup>7</sup>

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<sup>1</sup> Jan. 30, 2004 Office Action, p. 3

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> 0.00001 inch to about 0.0002 inch equals  $1 \times 10^{-5}$  inch to about  $2 \times 10^{-4}$  inch

<sup>6</sup> 0.0005 inch to about 0.002 inch equals  $5 \times 10^{-4}$  inch to about  $2 \times 10^{-3}$  inch

<sup>7</sup> See Jan. 30, 2004 Office Action, p. 3

Further, Appellants' declarant stated that, "The instant Application is distinguishable from McGuire because the bending resistance of the substrate becomes the limiting factor in the adherence of a food storage wrap to rough or irregular surfaces when thin adhesive layers are used. The instant Application has found that storage wrap materials having adhesive layers thinner than those specified in McGuire can be produced by applying a thin layer of adhesive (0.00001 inch to 0.0002 inch) to a film substrate having a thickness ranging from 0.0001 inch to 0.001 inch."<sup>8</sup> Appellants' Declarant continues, "[S]uch thin adhesive layers (0.00001 inch to 0.0002 inch) as claimed in the instant Application are desirable because they provide significant cost savings and processing benefits due to the need for less adhesive."<sup>9</sup> Appellants' Declarant concludes by stating that, "[D]isposing a thin adhesive layer . . . upon a sheet material having a thickness ranging from about 0.0001 inch to 0.001 inch is not disclosed or suggested by [the] McGuire [reference]."<sup>10</sup> Therefore, it is apparent that the '235 reference does not provide any suggestion or motivation to provide Appellants' claimed invention.

In any case, the '235 reference simply does not teach or suggest each and every element of Appellants' claimed invention. In particular, the '235 reference does not disclose a storage wrap material comprising a sheet material and having a thin coating of adhesive disposed thereon, as required by Appellants' claims. Accordingly, the rejection of the '235 reference should be withdrawn.

**B. Claims 3-6 Contain a Further Limitation Not Found in the Cited Prior Art.**

Claims 3 and 4 each depend from Appellants' Claim 1 and require the storage wrap material to have an adhesive composition coating with a weight per unit area of about 0.1 g/m<sup>2</sup> to about 2 g/m<sup>2</sup> and 0.3 g/m<sup>2</sup> to about 1.5 g/m<sup>2</sup>, respectively. Claims 5 and 6 each depend from Claim 1 and require the storage wrap material to have an adhesive composition coating covering less than 75% of the first active side of the sheet material and less than 55% of the first active side of the sheet material, respectively.

The prior art does not teach a storage wrap material having the limitations presented in Appellants' Claims 3-6. Accordingly, Claims 3-6 should be allowable.

**IX. CONCLUSION**

The Examiner has not satisfied the burden of demonstrating that Appellants' claimed invention is obvious over the cited reference. Specifically, nothing in the reference, when taken individually, or in combination with Appellants' Specification, teaches, discloses, or even suggests Appellants' claimed storage wrap material.

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<sup>8</sup> See Wnuk Declaration, Nov. 4, 2003

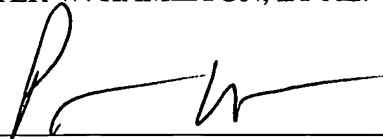
<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

Thus, for the reasons stated above, the Board is respectfully requested to find Claims 1-20 of the instant Application allowable over McGuire, et al., U.S. Patent No. 5,965,235.

Respectfully submitted,

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APPENDIX  
Appealed Claims: Serial No. 10/003,900

1. (Previously Presented) A storage wrap material comprising a sheet material having a thickness ranging from about 0.0001 inches (0.0025 mm) to 0.001 inches (0.025 mm), said sheet material having a first active side and a second side, the first active side comprising a plurality of three-dimensional non-adherent protrusions extending outwardly from surrounding depressions and an adhesive composition coating on at least a portion of the depressions, wherein the adhesive composition coating has a thickness less than the height of the non-adherent protrusions and from about 0.00001 (0.00025 mm) to about 0.0002 inches (0.0051 mm) in thickness.

2. (Original) The storage wrap material of claim 1, wherein the adhesive composition coating has a thickness of from about 0.00003 (0.00076 mm) to about 0.00015 inches (0.0038 mm).

3. (Original) The storage wrap material of claim 1, wherein the adhesive composition coating has a weight per unit area of about 0.1 g/m<sup>2</sup> to about 2 g/m<sup>2</sup>.

4. (Original) The storage wrap material of claim 1, wherein the adhesive composition coating has a weight per unit area of about 0.3 g/m<sup>2</sup> to about 1.5 g/m<sup>2</sup>.

5. (Original) The storage wrap material of claim 1, wherein the adhesive composition coating covers less than 75% of the first active side of the sheet material.

6. (Original) The storage wrap material of claim 1, wherein the adhesive composition coating covers less than 55% of the first active side of the sheet material.

7. (Original) The storage wrap material of claim 1, wherein the first active side is activatable by an externally applied force exerted upon the sheet material.

8. (Original) The storage wrap material of claim 7, wherein the first active side is activatable by an externally applied compressive force exerted in a direction substantially normal to the sheet material.

9. (Original) The storage wrap material of claim 7, wherein the active side is activatable by an externally applied tensile force exerted in a direction substantially parallel to the sheet material.

10. (Original) The storage wrap material of claim 1, wherein the first active side is adapted to be selectively activated in discrete regions by a user.

11. (Original) The storage wrap material of claim 1, wherein the first active side comprises an adhesion peel force after activation by a user which is greater than an adhesion peel force exhibited prior to activation by a user and which is sufficient to adhere to and form a barrier seal against a target surface, the seal exhibiting barrier properties at least as great as those of the storage wrap material and the target surface.

12. (Original) The storage wrap material of claim 1, wherein the second side comprises an active side.

13. (Original) The storage wrap material of claim 1, wherein the first active side is adapted to form a permanent bond with a target surface when activated.

14. (Original) The storage wrap material of claim 1, wherein the first active side is adapted to form a releasable bond with a target surface when activated.

15. (Original) The storage wrap material of claim 1, wherein the sheet material comprises a polymeric film material.

16. (Previously Presented) A storage wrap material produced by a process comprising:

- (a) providing a first embossing roll having a first embossing pattern disposed thereon, wherein the first embossing roll is engaged with a second embossing roll, the second embossing roll having a second embossing pattern disposed thereon, the first embossing pattern and the second embossing pattern being complimentary;
- (b) applying an adhesive composition to the first embossing roll;
- (c) contacting a sheet material having a thickness ranging from about 0.0001 inches (0.0025 mm) to 0.001 inches (0.025 mm), said sheet material with the first embossing roll after step (b), wherein the adhesive composition forms an adhesive composition coating on the sheet material in register with the first embossing pattern of the first embossing roll; and
- (d) passing the sheet material between the first embossing roll and the second embossing roll wherein the first embossing roll and the second embossing roll emboss the sheet material with the complimentary embossing pattern;

wherein the adhesive composition coating has a thickness of from about 0.00001 (0.00025 mm) to about 0.0002 inches (0.0051 mm) in thickness.

17. (Original) The storage wrap material of claim 16, the process further comprising:

- (i) applying the adhesive composition to a first adhesive application metering roll at an initial tangential speed prior to step (b);
- (ii) accelerating the adhesive composition through a series of metering gaps between a plurality of adjacent adhesive rolls;
- (iii) applying the adhesive composition to an adhesive application roll rotating at a tangential line speed which is higher than the initial tangential speed; and
- (iv) transferring the adhesive composition from the adhesive application roll to the first embossing roll.

18. (Original) The storage wrap material of claim 16, the process further comprising:

- (e) removing the sheet material from the first embossing roll.

19. (Original) The storage wrap material of claim 18, wherein the first embossing roll at step (e) has a temperature which is lower than a temperature of the first embossing roll at step (b);

20. (Previously Presented) A storage wrap material produced by a process comprising:

- (a) providing a first embossing roll with a first embossing pattern having lands and recesses disposed thereon, wherein the first embossing roll is engaged with a second embossing roll, the second embossing roll having a second embossing pattern disposed thereon, the first embossing pattern and the second embossing pattern being complimentary;
- (b) passing a sheet material having a thickness ranging from about 0.0001 inches (0.0025 mm) to 0.001 inches (0.025 mm), said sheet material between the engagement of the first embossing roll and the second embossing roll wherein the first embossing roll and the second embossing roll emboss the sheet material with the complimentary embossing pattern; and
- (c) applying an adhesive composition to the sheet material after step (b)

wherein the adhesive composition is present on the sheet material at a level of from about 0.00001 (0.00025 mm) to about 0.0002 inches (0.0051 mm) in thickness.